S.B. Civil Misc. Appeal No.436/2003

M/s. Singhvi Oil Industrial.
vs.
Mittal Oil Mills and another.

Date : 18.9.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. RL Jangid, for the appellant.

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Heard learned counsel for the appellant.

This appeal is directed against the order dated 17.1.2003 by which the appellant's application under Order 39 Rules 1 and 2 CPC was dismissed by the trial court.

Brief facts of the case are that the plaintiff/ appellant filed suit for injunction against the defendants on the ground that the trademark in question is the registered trademark of the plaintiff and, therefore, the defendants have no right to use the trademark which is similar and totally identical to the trademark of the plaintiff.

The defendants submitted reply to the injunction application stating therein that the defendants are using the trademark since 1978 continuously. However, earlier it was used by one of the defendant who was running HUF business and subsequently converted that business into partnership business and thereafter, a private limited company in the year 1999. The defendants also submitted an

application for grant of injunction against the plaintiff.

Both the applications were dismissed by the trial court on the grounds that both the parties appear to be aware of the use of trademark by another party and both the parties are running their business with the trademark “tractor”. The court below observed that there is no question of irreparable injury in the facts and circumstances of this case.

It appears that the injunction applications of the appellant and respondents both were dismissed by the court below on 17.1.2003. No interim order was passed by this Court in this appeal since 2003. More than 3½ years have already passed, therefore, it will be proper to direct the court below to decide the suit expeditiously if it has already not been decided.

Consequently, this appeal is disposed of with a direction to the trial court to decide the suit expeditiously preferably within a period of six months from the date of receipt of copy of the order of which Court which may be supplied by the appellant. The Court below is directed not to give unnecessary adjournments to the parties.

(PRAKASH TATIA), J.

S.Phophaliya